much moving to protect any ownership in the ideas expressed as to defend the complainant from the public gaze. The same reasoning would apply in the privacy cases, where also a technical property right is found.[8]

There seems to be no reason in principle against the tendency of these cases. Assuming it to be established that the chancery formerly concerned itself only with questions involving property rights, it has been sometimes argued that equity has become an inelastic science like the law,[9] and that therefore relief can not be given in cases for which there are no precedents. But modern conditions offer no peculiar reason for denying the chancellor his old function of supplementing the law,[10] and it would seem also that there is no unique quality in rights of status or in personal rights to exclude them from his protection. It seems clear, then, that the technical property rights invoked by the courts as a foundation for their taking jurisdiction are immaterial and should be discarded.

RECENT CASES.

ADMIRALTY — DECREES — CHANGE IN TITLE IN CONDEMNED PRIZE. — The plaintiff sued on a policy of marine insurance for loss of his ship by perils of the sea. The ship was captured during the Russo-Japanese war by a Japanese cruiser, but was wrecked on the Japanese coast before reaching port. Subsequently the wreck was condemned as a prize by a court of competent jurisdiction. *Held*, that the insured cannot recover, since the captor's title dates from the capture. *Andersen* v. *Marten*, [1907] 2 K. B. 248.

It has been a much vexed question at what time the property in a prize vests in the captor or his sovereign; whether at the moment of capture, or after retention of possession for a day and a night, or after the ship is brought *infra praesidia*. See *Goss* v. *Withers*, 2 Burr. 683. But by the modern maritime law it is the sentence of condemnation which passes title. *The Peterhoff*, Blatchf. Prize Cas. (U. S.) 620. It would seem therefore that the ship was lost by a peril of the sea while still the property of the insured, and that he should be entitled to recover on the policy. The court, however, denied recovery on the ground that the title of the captors related back to the time of the capture. The only authority for this doctrine is a case in which it was applied to validate the assignment of the captor's interest in the prize before condemnation. *Morrough* v. *Comyns*, 1 Wils. K. B. 211. This application of the fiction of relation of title is novel and seems not to be demanded by any considerations of justice or policy.

BILLS AND NOTES — DEFENSES — TIME GIVEN PRINCIPAL JOINT MAKER. — A negotiable promissory note was signed, without consideration, by one Lyons, with the word "surety" added. An extension was granted the other signer without Lyons' knowledge or consent, and the latter claimed to be discharged. *Held*, that the Negotiable Instruments Law changed the former law, and that he is still liable. *Cellers* v. *Meachem*, 89 Pac. 426 (Ore.).

For the discussion of a similar case in Maryland, see 20 HARV. L. REV. 646.

CONFLICT OF LAWS — CAPACITY — LAW DETERMINING CAPACITY OF MARRIED WOMAN TO CONTRACT. — A married woman promised to pay rent on a lease of two residences in New Orleans made to her while in Louisiana,

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[8] See 4 HARV. L. REV. 193, 203, 210.

[9] See Johnson *v.* Crook, 12 Ch. D. 639, 649.

[10] See Wallworth *v.* Holt, 4 Myl. & C. 619, 635; Green Island Ice Co. *v.* Norton, 105 N. Y. App. Div. 331, 332; Callender *v.* Callender, 53 How. Pr. (N. Y.) 364, 365.

where she was incapable by the laws of that state, although capable by those of her domicile. *Held*, that she is bound by her promise. *Freret* v. *Taylor*, 44 So. 26 (La.).

There is great conflict on whether the law of the domicile or the law of the place of making should prevail as to capacity to make simple commercial contracts. The prevailing rule in the United States seems to hold void those of married women when they are incapable by the law of the place of making. *Nichols, etc., Co.* v. *Marshall*, 108 Ia. 518. England and the Continental nations take an opposite view. *Guepratte* v. *Young*, 4 De G. & Sm. 217; STORY, CONF. OF LAWS, 7 ed., 65. By the weight of divided authority she is liable when capable by the law of the place of making. *Milliken* v. *Pratt*, 125 Mass. 374; *Bell* v. *Packard*, 69 Me. 105; *contra*, *First Nat'l Bank* v. *Shaw*, 109 Tenn. 237. Considering the immense amount of business done by non-residents in our states, it would seem that the better rule as to simple commercial contracts is to follow the law of the place of making, rather than to throw on business men the burden of finding out the law of their promisors' domicile. Furthermore, the case under discussion concerns realty; and contracts of this sort seem usually to be governed by the law of the place where the land is situated, rather than by that of either the domicile or the place of making. *Swank* v. *Hufnagle*, 111 Ind. 453.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — LEGISLATIVE REGULATION OF GAS RATES. — In a suit by a gas company to recover the price of gas furnished to the city of New York, the city set up the defense that the price was unreasonable, although less than the maximum rate fixed by the legislature. *Held*, that the statutory fixing of a maximum rate is equivalent to express legislative authority to charge up to that rate; and that no constitutional right of the consumer is thereby impaired even though the legislative rate is unreasonably high. *Brooklyn Union Gas Co.* v. *The City of New York*, 188 N. Y. 334.

For a discussion of the case in the lower court, see 20 HARV. L. REV. 69.

CONSTITUTIONAL LAW — DUE PROCESS OF LAW — RAILROAD TO FURNISH PARTICULAR SERVICE. — In order to make an important connection with another road, the Corporation Commission of North Carolina ordered a railroad to operate a particular passenger train. It appeared that this train could only be operated at a loss, but that the carrier would still be able to make a profit on its intra-state business. *Held*, that such an order does not deny to the carrier equal protection of the laws or due process of law. *The Atlantic Coast Line R. R. Co.* v. *The North Carolina Corporation Commission*, 206 U. S. 1. See NOTES, p. 49.

CONSTITUTIONAL LAW — PERSONAL RIGHTS — FREEDOM TO CONTRACT. — A statute made it unlawful for an employer to issue to an employee for labor performed any ticket, check, or writing redeemable in goods or merchandise. *Held*, that the statute is unconstitutional. *Jordan* v. *State*, 103 S. W. 633 (Tex., Ct. Crim. App.).

For a discussion of the principles involved, see 19 HARV. L. REV. 62.

CONSTITUTIONAL LAW — POWERS GRANTED TO CONGRESS AND TO THE FEDERAL JUDICIARY. — Kansas filed a bill in the United States Supreme Court to restrain Colorado from using the waters of the Arkansas River for irrigation purposes. The United States sought to intervene on the ground that Congress had power to regulate the matter by legislation. *Held*, that the Supreme Court has jurisdiction, and that the United States has no right to intervene. *Kansas* v. *Colorado*, 206 U. S. 46. See NOTES, p. 47.

CORPORATIONS — DIRECTORS AND OTHER OFFICERS — DIRECTOR'S RIGHT TO BUY CORPORATION'S PROPERTY AT EXECUTION SALE. — The defendant loaned money to a corporation of which he was a director. Upon failure of the corporation to repay, he brought suit and recovered judgment. At the execution sale he bought in the property. The plaintiff, a stockholder in the corporation, filed a bill to have the defendant declared a trustee. *Held* that in

the absence of unconscionable conduct on the part of the defendant, the sale will not be disturbed. *Marr* v. *Marr*, 66 Atl. 182 (N. J., Ct. of Ch.). See NOTES, p. 51.

CORPORATIONS — ULTRA VIRES — ASSIGNMENT OF FRANCHISE TO AN INDIVIDUAL. — The defendant corporation was empowered to maintain electric wire conduits in the streets of New York City, and was required by statute to furnish space in such conduits for the use of any corporation having the right to transmit electricity. The A company voluntarily assigned its franchise embracing this right to B, an individual, from whom it passed to the plaintiff corporation. *Held*, that the plaintiff may compel the defendant to allow it space in its conduits. *Matter of Long Acre, etc., Co.*, 188 N. Y. 361.

A New York corporation, such as the A company, may assign its franchise to another corporation. N. Y. Laws, 1893, c. 638. No provision is made, however, for an assignment to an individual, and, apart from express authorization, such an assignment by a public service corporation is *ultra vires*. *Stewart's Appeal*, 56 Pa. St. 413. By the better view, however, it does not necessarily follow that the transfer is of no effect; the transfer has in fact been made and the title passed. *Bank* v. *Whitney*, 103 U. S. 99. This reasoning was the basis of the decision in the present case. The facts, however, present a problem somewhat different from the ordinary cases of *ultra vires* transfers. The plaintiff would have been a competent grantee of the franchise had the transfer been made without the intervention of B. But where a *de facto* corporation is the only weak link in the chain of title the position of the ultimate grantee is not prejudiced. See 20 HARV. L. REV. 457. Applying this analogy to the present case, the result reached by the court seems correct. *Cf. Parker* v. *Elmira, etc., Co.*, 165 N. Y. 274.

DANGEROUS PREMISES — LIABILITY TO TRESPASSERS — CHILD TRESPASSER ON TURNTABLE. — The plaintiff, a boy of four or five years, entered the defendant's premises through a gap in its boundary hedge. While playing with companions on the defendant's turntable, which was not fastened, the plaintiff was injured. The jury found that the hedge was in a defective condition through the defendant's negligence. *Held*, that the defendant is not liable. *Cooke* v. *Midland Great Western Railway*, 41 Ir. L. T. R. 157 (Ir., Ct. App., June 14, 1907).

American rulings tend to deny the liability of a landowner to a child trespasser who has been injured through the condition of the premises, except in the so-called turntable cases, where the weight of authority seems to allow recovery. See 11 HARV. L. REV. 349, 434; 12 *ibid.*, 206. The principal case, it is believed, marks the first appearance of a turntable case in the English courts. The court finds that the defendant owes to the trespassing child no duty of care in respect to the condition of either the hedge or the turntable, and distinctly repudiates the fiction of "implied invitation" or "allurement." This decision seems in line with the reluctance of the courts to impose further restraints on a landowner's use of his land, and with the tendency of the English courts to treat a child trespasser the same as an adult.

DEEDS — PARTIES — GRANTOR AND GRANTEE SAME PERSON. — One M granted land to herself and three others. *Held*, that the grantor has a one-fourth undivided interest in the land. *Green* v. *Cannady*, 57 S. E. 832 (S. C.).

It is clear that a grantee is incapable of taking under his own deed, since two parties are as necessary to a deed as to a contract. And a grant by A to A, B, and C in trust has been held ineffective as to A, and to vest the entire legal estate in B and C. *Cameron* v. *Steves*, 9 N. Brunsw. 141. In that case, however, the grant, by express statutory provision, created a joint tenancy. Therefore, upon familiar principles of joint tenancy, B and C properly took the entire title, and since A was incapable of taking under his own deed, their interest was not subject to any right in him. See SHEP. TOUCH., 82. But in the present case the deed was construed as creating a tenancy in common, hence it purported to pass only one-fourth of the estate to each of the grantees. Con-